89-1755

No. A-573

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKALND, et al.,

Respondent, Appellee, Defendant

PETITIONER'S SUPPLEMENTAL BRIEF ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Raymond Dobard
Petitioner in Pro Per
1866 Alcatraz Ave.
Berkeley, CA 94703
415/658-5344 (Deafness)

April 30, 1990

To: The Justices of the Supreme Court of the United States

October Term, 1989

Raymond Dobard, Petitioner

v.

City of Oakland, et al., Respondent

Petitioner's Supplemental Brief on Writ of Certiorari in the United States Court of Appeals for the Ninth District

Petitioner, appellant, plaintiff Raymond Dobard hereby files this supplemental brief pursuant to Supreme Court Rule 22(.6) calling the court's attention to supportive cases and legislation or other intervening matters not available at the time of petitioner's last filing of petition executed on April 6, 1990 herein.

SUPPORTIVE CASE LAW FOR RIGHT OF ACTION AFTER PROPERTY HAS BEEN DESTROYED.

The United States Supreme Court held in North American Storage Co. v. Chicago 211 U.S. 307, that a party whose property is destroyed has a right of action after the acts which is not affected by the "ex-parte" condemnation of state officers.

> Mr. Justice Brown, in delivering the opinion of this Supreme Court upheld the aforementioned principles of the supra North American Storage Co. case in the court's opinion of the case of Lawton v. Steele as recited on pp. 13-14 of the petition on writ of certiorari herein dated April 6, 1990.

The court held in People ex. rel. Capcutt v. Board of Health, request judicial notice to pp. 11-12 of this petition for writ of certiorari dated 4-6-90 that boards of health under the act referred to could not, as to any existing state of facts, by their determination make that a nuisance which was not in fact a nuisance; and their determination was not final and conclusive on the owner of the premises wherein the nuisance were allowed to

exist; that before such a final and conclusive determination could be made, resulting in the destruction of property, the parties proceeded against must have a judicial hearing, not as a matter of favor, but as a matter of right, and the right to a hearing must be found in the acts.

The court held in Miller v. Horton, 152 Mass. 540, 26 N.E. 100, 10 L.R.A. 116, that the decision of the Board of Health in declaring a nuisance was not conclusive and that the legislature may authorize destruction of property in an emergency without a hearing beforehand. But it does not follow that it can throw the loss on the owner without a hearing. If he cannot be heard beforehand he may be heard afterward. The statute may provide for paying him in case it should appear that his property was not what the legislature had declared to be a nuisance, and may give him his hearing in that way.

The Supreme Court of Wisconsin held in

Lowe v. Conroy 97 N.W. 942, 102 AM St. Rap. 983, that it is no protection to health officers for destroying private property which in fact is no such nuisance or source of danger. An owner cannot be deprived of the right, either before or after such taking of his property, to have a judicial inquiry whether in fact he has forfeited the right to his property by coming within the condemnation of the law. In the absence of judicial inquiry wherein the owner is given full opportunity to establish that no nuisance or cause of sickness exists as claimed, the board of health cannot declare a thing a nuisance or source of danger to public health which is not so in fact.

The same principles as above existed or was amplified in the following cases relative to an owner's right to have hearing after houses are destroyed if one cannot obtain hearing prior thereto: Hutton v. City of Camden, 39 N.J. Law, 122; Pearson v. Zehr, 29 N.E. 854; Gaines v. Waters, 44 S.W. 353.

For all the foregoing reasons, the Jus-

ticiable Controversy of the disputed question of public nuisance has never been judicially determined, nor resolved and remain in dispute and the duty to determine what is a public nuisance is judicial in character and petitioner was entitled to a judicial determination at some point in the proceeding as to whether or not his subject B and Myrtle Street buildings contained a public nuisance and a source of danger.

Based on the above and foregoing this Honorable Supreme Court should grant an order to review the decision of the court below that was in conflict by departing from the accepted and usual course of judicial proceedings in cases of actual controversy within its jurisdiction relative to deciding a federal question relative to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201.

Dated: April 30, 1990

Respectfully Submitted,

Raymond Dobard

Raymond Dobard, Petitioner, Appellant, Plaintiff in pro persona